IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4082 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ASHOKKUMAR LALITBHAI PAREKH

Versus

DISTRICT MAGISTRATE 3RD SPECIAL LAND ACQUISITION

Appearance:

MR YOGESH S LAKHANI for Petitioner

MR SJ DAVE, AGP for Respondent No. 1, 4

MS PJ DAVAWALA for Respondent No. 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 29/06/2000

ORAL JUDGEMENT

By way of this Special Civil Application under Article 226 of the Constitution of India, the petitioner has challenged the order of detention dated 29-2-2000

passed by the District Magistrate, Porbandar in exercise of powers under Section 3(2)) of the PBMA Act, 1980 with a view to prevent the petitioner from black marketing essential commodities like kerosene (S.K.A.O.) and acting in any manner prejudicial to the maintenance of supplies of essential commodities like kerosene (S.K.A.O.) essential to the community.

2. Challenging the order of detention, it is contended by Mr.Y.S.Lakhani, learned advocate for the petitioner that the representation dated 16-3-2000 has been made by the detenu through the jail authority to (1) District Magistrate, Porbandar, (2) Secretary, Food and Civil Supply, State of Gujarat, (3) Shri S. Nautiyal, Additional Secretary, Union of India, but it was not forwarded immediately by the jail authority to concerned authorities and, therefore, there is a delay in forwarding the same. It has been further contended that though it has been received by the respondent No.3 i.e. the Union of India on 21-3-200, same has not been decided till 10-4-2000 and according to him, there is a delay of about 20 days. He has relied upon a case of Rajammal Vs. State of Tamil Nadu and another reported in AIR 1999 S.C. page 684 more particularly at head note which states as under:

"Detention-Unexplained delay of five days in considering and disposing detenu's representation-Mere absence of Minister at Headquarters not sufficient to justify delay-Detention vitiated."

The Apex Court quoted in the above referred judgment certain portion of a judgment delivered by a Constitutional Bench in K.M.Abdulla Kunhi and B.L.Abdul Khader V. Union of India, which reads thus:

"It is a constitutional mandate commanding the concerned authority to whom the detenu submits his representation to consider the representation and dispose of the same as expeditiously as possible. The words "as soon as may be" occurring in clause (5) of Article 22 reflects the concern of the Framers that the representation should be expeditiously considered and disposed of with a sense of urgency without an avoidable delay. However, there can be no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. There is no period prescribed either under the

Constitution or under the concerned detention law, within which the representation should be dealt with. The requirement however, is that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal".

It has been further held by the Apex Court in para 9 as under:

"The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing the representation.It is not enough to say that the delay was very short. Even longer delay can as well be explained. so the test is not the duration or range of delay, but how it is explained by the authority concerned."

He has drawn my attention towards para 4 of the counter affidavit filed on behalf of Union of India which states as under:

"As regards contention made in sub-para (d) of para of the petition, it is submitted that a representation dated 16/18-3-2000 made in favour of the detenu was received on 21-3-2000 in Gujarati language through Superintendent, Vadodara Central Jail. The State Govt. was requested to furnish the English version of the representation vide telegram dated 29-3-2000 and 5-4-2000. A copy of each representation in Gujarati and English language was received on 6-4-200 through office of the District Magistrate, Porbandar vide their letters dated 22-3-2000, 8-4-2000 and 9-4-2000 being Saturday and Sunday were closed holidays."

3. Relying upon para 4 of the counter affidavit, Mr.Lakhani has argued that though it was received by the

Central Govt. on 21-3-2000, it has remained unattended and for the first time, authority has applied its mind and sent a telegram to the concerned authority for providing English version on 29-3-2000 and representation has not been decided till 10-4-2000 and there is a delay of 20 days and, therefore, detention is vitiated.

4. It is true that in the instant case, affidavit clearly shows that though representation has been sent on 21-3-2000, it remained undecided till 10-4-2000. In the matter before the Supreme Court in Rajammal (supra), it appeared that there was a delay of five days. For that also, explanation has been putforward by the authority that Minister was on tour for a period of two days. Still, Apex Court has stated that delay of five days is a delay. Whereas in the present case there was a delay of 20 days in considering the representation. It is to be noted that in this case no satisfactory explanation has been put forward by the respondents though opportunities were given. Therefore, case of the present petitioner is on a much better footing to that of the case before the Supreme Court. Addl. Central Govt. Standing Counsel has not been able to explain the delay occurred in deciding the representation. As the representation of the petitioner has not been decided by the Central Govt., the rights guaranteed under Article 22(5) of the Constitution of India are violated which make the order of detention illegal.

5. In view of the above, the petition is allowed. The order of detention dated 29-2-2000 passed against the petitioner-detenu is hereby quashed and set aside. The detenu-Ashokkumar Lalitbhai Parekh is ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly with no order as to costs.

(R.P.DHOLAKIA,J.)

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